



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 30 2007

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Vicki J. Wright
Krieg Devault, LLP
One Indiana Square
Suite 2800
Indianapolis, Indiana 46204-2079

Dear Ms. Wright:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Rolls Royce Corporation (Rolls Royce), CAA Docket No. CAA-05-2007-0006. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAR 30 2007.

Pursuant to paragraph 30 of the CAFO, Rolls Royce must pay the \$18,329 civil penalty within 30 days of the date the CAFO was filed, MAR 30 2007. The check must display the case docket number, CAA-05-2007-0006, and the billing document number, 2750703A006.

Please direct any questions regarding this case to Kathleen Kelly Schnieders, Associate Regional Counsel, 312-353-8912.

Sincerely yours,

Brent Marable, Chief

Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Rolls Royce Corporation
Indianapolis, Indiana

Respondent.

) Docket No. CAA-05-2007-0006
) Proceeding to Assess a Civil
) Penalty under Section 113(d)
) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
)
)
)

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CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Rolls Royce Corporation, a corporation doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a Consent Agreement and Final Order (CAFO). 40
C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Rolls Royce admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Rolls Royce waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(2), require that owners and operators of industrial process refrigeration equipment (IPRs) normally containing more than 50 pounds of refrigerant must have leaks repaired if the appliance is leaking at a rate such that the loss of refrigerant will exceed 35 percent of the total charge during a 12-month period.

10. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(9), require that owners and operators of IPRs must repair leaks pursuant to 40 C.F.R. § 82.156(i)(2) within 30 days after discovery of the leak.

11. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(3), require that owners and operators of IPRs conduct a follow-up verification test within 30 days after the initial verification test.

12. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(3) require that owners and operators of IPRs that fail a follow-up verification test must notify U.S. EPA within 30 days of the failed follow-up verification test.

13. The Stratospheric Ozone Standards, at 40 C.F.R. § 82.156(i)(6), state that owners and operators of IPRs are not required to repair a leak if within 30 days of discovering the exceedance of the applicable leak rate, or within 30 days of a failed follow-up verification test, they develop a retrofit or retirement plan for the leaking appliance. The plan must be kept at the site of the appliance, and all work under the plan must be completed within one year of the plan's date.

14. The Stratospheric Ozone Standards, at 40 C.F.R. §82.156(i)(3)(iii), require that owners and operators of IPRs must retrofit or replace the equipment within one year of the

follow-up verification test if the test showed that the repairs had not been successful.

15. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

16. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

18. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator may issue an order requiring compliance to any person who has violated or is violating the

Stratospheric Ozone Standards. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Factual Allegations

19. Rolls Royce owns and operates a helicopter engine manufacturing facility at 2001/2355 South Tibbs Avenue, Indianapolis, Indiana 46241.

20. The facility utilizes seven appliances with ozone-depleting charges greater than fifty pounds.

21. At the facility, three IPRs containing HCFC (R-22) have been in use. HCFC R-22 is a Class II Substance, as found in § 602(b) of the Act.

22. Since 2003, those three IPRs have been repaired on an ongoing basis, and have had refills of refrigerant. Although Rolls Royce maintained some records for each of the three IPRs, those records did not fully comply with the requirements found at 40 C.F.R. Part 82.

23. Rolls Royce discovered these violations through an internal audit that it conducted beginning in October 2006. When the violations were discovered, Rolls Royce voluntarily and timely disclosed those violations to U.S. EPA.

24. Since discovering and disclosing the violations, Rolls Royce has replaced the three IPRs.

Violations

25. The three IPRs at the Indianapolis facility experienced leaks between 2003 and the present that resulted in an annual leak rate for each unit in excess of 35%.

26. Rolls Royce failed to perform and/or document initial and follow-up verification tests to verify that the repairs performed had brought the leak rate of the three IPRs to below 35%.

27. Rolls Royce did not develop retrofit or retirement plans for the three IPRs when repairs performed were unable to bring the annual leak rate below 35%.

28. Rolls Royce did not retrofit or retire the three IPRs when repairs performed were unable bring the leak rate to below 35%.

29. Rolls Royce did not notify U.S. EPA of failed follow-up verification tests indicating that the repairs performed on the three IPRs failed to bring the annual leak rates below 35%.

Civil Penalty

30. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), including the facts of this case, the cooperation demonstrated by Rolls Royce, and its prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$18,329.

31. Rolls Royce must pay the \$18,329 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

32. Rolls Royce must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

33. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Kathleen Schnieders, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

34. This civil penalty is not deductible for federal tax purposes.

35. If Rolls Royce does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Rolls Royce will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Rolls Royce will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

38. The effect of the settlement, as defined in paragraph 40, is conditioned upon the accuracy of the Respondent's representations to U.S. EPA, as memorialized in paragraphs 21-24 of this CAFO, as well as Respondent's letter dated November 2, 2006.

39. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

40. This CAFO does not affect Rolls Royce's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 37 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

41. Rolls Royce certifies that it is complying fully with the Stratospheric Ozone Standards, found at 40 C.F.R. Part 82.

42. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Rolls Royce's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

43. The terms of this CAFO bind Rolls Royce, and its successors, and assigns.

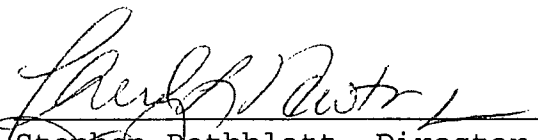
44. Each person signing this CAFO certifies that he or she has the authority to sign this CAFO for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and attorneys' fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

3/29/07
Date


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CAA-05-2007-0006

CONSENT AGREEMENT AND FINAL ORDER
Rolls Royce Corporation
Docket No CAA-05-2007-0006

Rolls Royce Corporation, Respondent


Date

Steven F. Dwyer
Chief Operating Officer

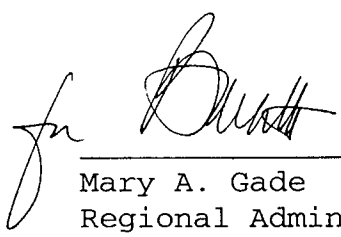
March 23, 2007

CONSENT AGREEMENT AND FINAL ORDER
Rolls Royce Corporation
Docket No. CAA-05-2007-0006

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

3-30-07
Date



Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511